

DEATH AND THE MAID: WORK, VIOLENCE, AND THE FILIPINA IN THE INTERNATIONAL LABOR MARKET

DAN GATMAYTAN*

If rape is inevitable, relax and enjoy it.

—Raul Manglapus,
Former Secretary of Foreign Affairs,
Republic of the Philippines¹

I. GENERAL INTRODUCTION AND ILLUSTRATION

A. Introduction

The above comment from the former Secretary of Foreign Affairs was made in the course of a Congressional hearing investigating reports that Iraqi soldiers occupying Kuwait were raping Filipina domestic helpers during the Persian Gulf Crisis in 1990. Women's groups attending the hearing called the remark a demonstration of "the low regard of the [Philippine] government for women."² While improper and offensive, the Secretary's comment captured a common perception that Filipina overseas domestic helpers are dispensable.³ While the Persian Gulf Crisis focused increased attention on their circumstances, the vulnerability of Filipina overseas contract workers ("OCWs") to violence existed long

* LL.B., University of the Philippines, 1991; M.S.E.L., Vermont Law School, 1995; LL.M., University of California, Los Angeles, 1996. My thanks to Professor Frances E. Olsen for her comments, suggestions, and guidance that helped shape this undertaking. I am indebted to my entire class in Feminist Legal Theory, and in particular to Ray Caldito, Evelyn Figueroa, Sarah Gill, Diane Klein, Lorena Reynolds, Dawn Salazar, and Marissa Yu for their helpful comments. Special thanks to Raisha Y. Deleon for taking time to edit earlier drafts of this work, and to Meg Obenauf, J.D. Fay, and Kay Bakshi of the *Harvard Women's Law Journal* for preparing this work for publication.

¹ *Philippine Foreign Secretary's Rape Remarks Spark Dispute*, REUTERS, Sept. 4, 1990, available in LEXIS, News Library, ALLWLD File.

² *Id.* Manglapus apologized for the comment, saying that it was a joke that was taken out of context. See *Philippine Foreign Secretary Apologizes for Remarks On Rape*, Sept. 6, 1990, REUTERS LIBRARY REPORT, available in LEXIS, News Library, ALLWLD File.

³ "Filipina overseas domestic helper" is variously referred to in this Article as "Filipina domestic helper," "Filipina domestic worker," and "Filipina overseas contract worker." All these terms designate a female from the Philippines engaged in domestic employment (e.g., maid, nanny, gardener) in countries other than the Philippines.

before 1991. Nevertheless, the recent international publicity of violence against OCWs resulted in intense criticism of the Philippine government's policy of exporting labor.

This Article analyzes the Philippine and international legal frameworks for the protection of Filipina overseas domestic helpers⁴ from violence⁵ and the effectiveness of these measures. Though the Philippine government's actions do not seem insignificant on paper, violence against these women persists. This Article posits that the Philippine and international legal responses are ineffective. To date, such responses merely attempt to mitigate the violence against Filipina overseas workers. The root causes of violence run deeper than the problems addressed by Philippine policymakers because the very act of exporting labor contributes significantly to the perpetuation of violence against women.

While violence against Filipina OCWs occurs worldwide, this study focuses on the experience of these women in Middle Eastern countries.⁶ The Middle East employs tens of thousands of Filipina OCWs.⁷ In addition, much of the data describing violence against Filipina OCWs originates from the Middle East.⁸

This study is overdue. Filipinos have been employed as overseas contract workers for nearly 100 years.⁹ The health and welfare of these displaced workers, the majority of whom are women, have not been comprehensively explored,¹⁰ as most Filipino scholars studying women's

⁴ While male overseas workers also suffer abuse, the frequency and intensity of violence against Filipina domestic workers requires, in this writer's opinion, a deeper level of inquiry.

⁵ For purposes of this Article, "violence" is understood to mean more than the infliction of bodily harm. "Violence" includes economic, cultural, spiritual, and emotional suppression. This Article explains that Filipinas suffer many of these less evident though similarly traumatic forms of abuse. The redefinition of violence used in this Article was first proposed by women of color to call attention to many forms of violence not considered by existing legislation. See G. Cheiza Carraway, *Violence Against Women of Color*, 43 STAN. L. REV. 1301, 1305-06 (1991).

⁶ Countries specifically mentioned include the Kingdom of Saudi Arabia, Bahrain, United Arab Emirates ("UAE"), Kuwait, Qatar, and Iraq.

⁷ In 1995, there were between 20,000 and 30,000 Filipinas employed as domestic workers in the United Arab Emirates, 25,000 in Kuwait, and another 50,000 in Saudi Arabia. See *Thousands of Filipina Maids Evacuated*, APS DIPLOMAT RECORDER, May 27, 1995, available in 1995 WL 8162771. For further discussion, see Part II, *infra*. In the last three years, women have begun to outnumber men in overseas contract work. Philippine government figures show that women constituted 60% of migrant workers in 1994, and again in the first quarter of 1995. See Luz Rimban, *Worker Exodus Continues Despite Horror Tales*, INTER PRESS SERVICE, Nov. 10, 1995, available in 1995 WL 10135665.

⁸ For illustration and comparison, this Article occasionally discusses the experiences of Filipina domestic helpers in other countries.

⁹ See C. Siddayao, *Philippines*, in OVERSEAS EMPLOYMENT ADMINISTRATION IN SELECTED ASIAN COUNTRIES 150 (Proceedings of the ILO/ARPLA Inter-Country Symposium on Overseas Employment Administration, Pattaya, Thailand, May 21-25, 1984).

¹⁰ Academics in the United States have explored related areas of concern such as the use of mail-order brides. See, e.g., Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J.L. REF. 197 (1994). Similarly, some studies exist in the United States relating to Filipina "comfort women" used by the Japanese military forces during World War II. See Tong Yu, *Reparations for Former Comfort Women of*

issues focus their efforts domestically." Philippine labor law studies are similarly incomplete.¹²

Part I of this Article continues with an example of the violence Filipina OCWs experience and the Philippine government's response. Part II discusses the extent to which Filipinas are engaged in overseas contract work throughout the world. In addition, Part II describes the Philippine remittance requirements and the economic effects of overseas employment. Part EH identifies the various types of violence migrant Filipinas suffer as well as the damage overseas employment effectuates on the Philippine economy. Part IV begins to explore some the causes for the violence. Finally, Part V discusses the legal "cures" implemented by the Philippine government and the international community and their meager impact on the plight of Filipina overseas contract workers.

B. Sarah's Story

Although stories about violence against Filipina OCWs have trickled into the Philippines over the past several years, the case of Sarah Bala-bagan was the first to be widely publicized domestically. Sarah's case also generated unprecedented international interest and new criticism of the Philippine government's labor-export policy.

World War II, 36 HARV. INT'L L.J. 528 (1995); David Boling, *Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility?*, 32 COLUM. J. TRANSNAT'L L. 533 (1995); Karen Parker & Jennifer F. Chew, *Compensation for Japan's World War II War-Rape Victims*, 17 HASTINGS INT'L & COMP. L. REV. 497 (1994). The Filipino legal community, however, has been silent not only on abuse against Filipino OCWs, but also on these related areas of concern.

¹¹ See Irene R. Cortes, *Discrimination Against Women and Employment Policies*, 57 PHIL. L.J. 157 (1982) (examining discrimination in the employment of women in the Philippines); Enrique M. Fernando, *The Movement for Equal Rights: The Validity of Legislation Beneficial to Women*, 51 PHIL. L.J. 441 (1976) (examining the constitutionality of laws favoring women); Florida Ruth P. Romero, *Women and Labor: Is the Economic Emancipation of the Filipino Working Woman at Hand?*, 50:1 PHIL. L.J. 44 (1975); Irene R. Cortes, *Women's Rights Under the 1973 Constitution*, 50:1 PHIL. L.J. 1 (1975) (on family law, employment, and education statutes). At least one work has discussed the international instruments designed to protect women, but it did not attempt to assess the condition of Filipinas in light of these instruments. See Cherry-Lynn S. Ricafrente, *International Labor Standards for Working Women*, 50:1 PHIL. L.J. 55 (1975). See also Myrna S. Feliciano, *Law, Gender, and the Family in the Philippines*, 28 LAW & SOC. REV. 547, 559-60 (1994) (concluding that Philippine law adequately protects Filipinas). While Feliciano acknowledged that "the gap between law and practice still must be examined to match economic and social realities," the article omitted any reference to Filipina overseas domestic workers. *Id.*

¹² See Augusto S. Sanchez, *The Present Labor Laws: Their Importance to the National Interest of the Philippines*, 32:2 ATENEO L.J. 70 (1988) (calling for the repeal of repressive labor laws promulgated by former President Ferdinand E. Marcos). A dated student article could be the sole exception. See Victoria Sisante-Bataclan, *An Assessment of Protection Accorded to Filipino Overseas Workers*, 53 PHIL. L.J. 436 (1978). Unfortunately, even her analysis is limited to the problems of illegal recruitment, standardization of employment terms, and race discrimination against Filipino workers. *Id.*

Sarah Balabagan is from a small impoverished town in the southern islands of the Philippines. To contribute to the family's income, she followed thousands of other Filipinas to the United Arab Emirates (UAE) to work as a maid. Shortly after starting work, Sarah's name and image gained notoriety throughout the world as news spread that she had killed her employer, Mohammed Al-Baloushi. During the criminal trial that followed, Sarah, then fourteen years old, claimed she was defending herself as Baloushi raped her at knifepoint.¹³

In July 1994, an Islamic court sentenced Sarah to seven years in prison for manslaughter and ordered her to indemnify Al-Baloushi's family.¹⁴ The court also found that Al-Baloushi raped Sarah.¹⁵ In addition to bruises and lacerations about Sarah's head and neck, the testimony of medical examiners established sexual assault.¹⁶ Both Baloushi's family and the Philippine government appealed the decision.¹⁷

During the second trial, the medical testimony changed. Although one of the two medical examiners maintained that Al-Baloushi raped Sarah around the time of the murder, the second changed her testimony to state only that Sarah lost her virginity at least a week before the incident.¹⁸ On September 16, 1995, the court reversed the findings of rape and sentenced Sarah to death.¹⁹

News of Sarah's sentencing was widespread. At home, Filipinos demonstrated, burned the United Arab Emirates flag, and pled for Sarah's release.²⁰ Philippine President Fidel V. Ramos called the demonstrations and flag-burning "unreasonable displays of emotion."²¹ Not surprisingly, the President's statement was ill-received.²² Still smarting from criticisms that it was unable to protect another Filipina domestic worker who was executed in Singapore just six months earlier,²³ President Ramos ap-

¹³ See Johanna Son, *Philippines—Labor: Protests Over Maid's Death Sentence Intensify*, INTER PRESS SERVICE, Oct. 3, 1995, available in 1995 WL 10134674. Sarah later explained her employer was 58 years old, not 85 as originally reported. See *Sarah Reveals There was No Rape, Just an Attempt*, MANILA TIMES, Nov. 28, 1996, at 1, 5. Moreover, Sarah stated he had not raped her but merely attempted to do so. See *id.* Her self-defense claim, however, is not any less valid simply because the rape was unsuccessful.

¹⁴ See Kimberley Dozier, *New Focus of Outrage at Abuse of Emigres*, S.F. CHRON., Sept. 29, 1995, at D1, available in 1995 WL 5300789. See also *Rough Justice: Overseas Workers Need to Be Better Protected*, ASIAWEEK, Oct. 13, 1995, at 26.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.* To confuse matters, the second tribunal said there was evidence that Sarah was still a virgin. See *id.*

¹⁹ See Son, *supra* note 13.

²⁰ See *Unreasonable Acts Won't Help Sarah*, MANILA TIMES, Sept. 21, 1995, at 4.

²¹ *Id.*

²² See Domini M. Torrevillas, *Violence Against Filipina OCWs: The Flor Contemplacion and Sarah Balabagan Cases*, in *FILIPINO WOMEN MIGRANT WORKERS: AT THE CROSSROADS AND BEYOND IN BEIJING* 46, 60 (Ruby P. Beltran & Gloria F. Rodriguez eds., 1996).

²³ A Filipina overseas domestic helper, Flor Contemplacion, confessed to the murder of another maid, Della Maga, and the latter's four-year-old Singaporean ward. See Lara

pealed to the UAE President for executive clemency on Sarah's behalf.²⁴ Sheik Zayed ibn Sultan al-Nahyan interceded and urged the Baloushi family to forgive Sarah in accordance with Islamic principles.²⁵ The Baloushi family eventually relented and "relinquished their right to demand" Sarah's execution.²⁶ The court vacated its ruling after the family agreed to settle for \$41,000 in "blood money,"²⁷ welcoming "the decision of the family to exercise their prerogative of mercy toward Miss Balabagan."²⁸

On October 30, the court sentenced Sarah to 100 light lashes, a year in jail, and deportation upon payment of the settlement fee.²⁹ The court did not credit Sarah's several months in jail as time-served on her sentence.³⁰ Sarah received 100 lashes early in 1996³¹ and was released in August after serving three-fourths of her sentence.³²

Sarah's case was neither the first nor the last of its kind. In 1992, Lorna Laraquel, after her employer abused her over a period of time and refused to allow her to return to the Philippines, killed the employer, a Kuwaiti Princess.³³ In 1993, another Filipina maid, Sonia Panama, died after a month of hospitalization in Kuwait.³⁴ She complained of being

Parpan, *Manila Shifts Tack to Protect Overseas Workers*, AGENCE FRANCE PRESSE, Apr. 24, 1995, available in LEXIS, World Library, ALLWLD File. Flor was executed by the Singapore government. See *id.*

²⁴ See *Ramos Grateful for Dropping of Death Sentence on Maid*, JAPAN ECONOMIC NEWSWIRE, Oct. 16, 1995, available in LEXIS, World Library, ALLWLD File. Other countries expressed support for the clemency appeal. In Germany, a group of female Bundestag deputies urged Foreign Minister Klaus Kinkel to try to save Balabagan. See Dozier, *supra* note 14. Japanese groups advocating foreigners' rights sought amnesty for Balabagan in a letter to the UAE ambassador to Japan. See Son, *supra* note 13. In response to an appeal from the Philippine embassy in Paris, French President Jacques Chirac indicated he would make "appropriate interventions" in the case. *Filipina Maid's Appeal Hearing Opens, Adjourns*, ASSOCIATED PRESS, Oct. 9, 1995, available in 1995 WL 4409554. It should be noted that the Philippine government funded Sarah's legal defense. See Son, *supra* note 13. However, the government's active involvement can be explained by the fact that six months earlier the Contemplacion execution left the government facing harsh criticism about its inability to protect the country's overseas workers. See *id.*

²⁵ See *Victim's Family Ends Demand for Maid's Death*, EDMONTON J., Oct. 15, 1995, available in 1995 WL 7378316.

²⁶ *Id.*

²⁷ See *Maid Who Killed Alleged Would-be Rapist Is Spared Execution by Man's Family*, SACRAMENTO BEE, Oct. 16, 1995, at A9.

²⁸ *Filipina Maid Will Not Be Executed, May Go Free*, ASSOCIATED PRESS, Oct. 14, 1995, available in 1995 WL 4410116.

²⁹ See *Islamic Court Reverses Maid's Death Sentence, But Orders 100 Lashes*, VANCOUVER SUN, Oct. 31, 1995, at A13.

³⁰ See *id.*

³¹ See *Filipina Maid Caned, Jailed*, CALGARY HERALD, Feb. 11, 1996, at A12. Sarah was given 20 lashes a day for 5 consecutive days from the end of January to early February. See *id.* Philippine embassy officials who visited Sarah said that the lashing left no marks or bruises on her body. See *id.*

³² See Malou Talosig & Mia Gonzales, *Sarah is Home, Grateful for Life*, TODAY, Aug. 2, 1996, at 1.

³³ See Ma. Ceres P. Doyo, *Chronicle of a Dessert Killing*, SUNDAY INQUIRER MAG., Apr. 12, 1992, reprinted in MA. CERES P. DOYO, *JOURNALIST IN HER COUNTRY: ARTICLES, ESSAYS, AND PHOTOGRAPHS, 1988-1992* 77 (1993).

³⁴ See Miriam Amie, *Kuwait Remains Slow to Stem Broad Abuse of Foreign Workers*,

raped by her employer and imprisoned and tortured by her employer and his wife.³⁵ Sonia's body showed evidence of beatings with spiked boots, and- cigarette burns covered ninety percent of her body.³⁶ She had a severed ear, bite marks on her stomach, and a gangrenous knife wound.³⁷ In 1995, a Filipina maid died after being beaten by the wife of her employer.³⁸ A human rights group called Middle East Watch claims that almost without exception female Asian contract workers in the Gulf complain of nonpayment of salaries, passport deprivation, and virtual confinement in their employers' homes.³⁹ The group alleges there is "a pattern of rape, physical assault, and mistreatment of Asian maids that takes place largely with impunity."⁴⁰

Filipina domestic helpers have responded to violence in a variety of ways including attempting to flee the employer's residence,⁴¹ kidnapping an employer's child in exchange for release from an employment contract,⁴² and committing suicide.⁴³ Periodically, host countries report unexplained deaths of Filipina OCWs as suicides.⁴⁴

n. THE EXPORT OF PHILIPPINE LABOR

Contract worker migration has been a part of Philippine culture for nearly 100 years.⁴⁵ Worker migration from the Philippines began with

ROCKY MNT. NEWS, Apr. 4, 1993, at 2A. The Philippine Embassy in Kuwait receives an average of two rape complaints a month. See Neil Macfarquhar, *The Gulf: Wars Go On For Many*, SEATTLE TIMES, Feb. 26, 1992, at A3.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *Filipina Dies After Beating*, APS DIPLOMAT RECORDER, June 17, 1995, available in 1995 WL 8162880.

³⁹ See *Asian Maids Say Kuwaiti Employers Rape Them*, REC. N. N.J., Aug. 8, 1992, at A41.

⁴⁰ *Id.*

⁴¹ A Filipina domestic helper in the UAE was injured when she tried to escape from her employer's eighth-floor flat by lowering herself from the window with bed sheets. See *Filipina Maid Hurt In Escape Bid With Knotted Bed Sheets*, AGENCE FRANCE PRESSE, Feb. 11, 1996, available in LEXIS, World Library, ALLWLD File. The knots tore, and she fell on a boat and trailer. See *id.* The woman suffered multiple fractures in her spine, pelvis, and left leg. See *id.*

⁴² A Filipina maid in Kuwait abducted her employers' three-year-old daughter, held the child at the Philippine embassy for 12 hours, and demanded that the family return her passport and allow her to find another job. See *Filipina Abducts Employers' Child*, APS DIPLOMAT RECORDER, June 24, 1995, at 4, available in 1995 WL 8162939. The child was released after extensive negotiations involving the Philippine embassy and the Foreign and Interior Ministries. See *id.*

⁴³ See *Asian Maids Suffer Abuse in Persian Gulf Region*, ORLANDO SENTINEL, July 16, 1995, at 4.

⁴⁴ See Terry McCarthy, *Philippines Tries to Erase Shame of Sending Workers Overseas*, OTTAWA CITIZEN, Jan. 27, 1994, at D1.

⁴⁵ See Siddayao, *supra* note 9, at 150. American capitalists sought Filipinos after the Chinese were barred from similar migration by United States immigration laws. See RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 57-62 (1989). Korean workers also stopped coming into the United States because

the recruitment of agricultural workers for Hawaii and the western part of the United States.⁴⁶ In the 1950s and the 1960s, Filipinos found employment in Asian countries working in the agricultural and logging industries.⁴⁷ In the 1960s, Filipinos migrated to parts of Europe, and after a brief respite, migration again swelled in the 1970s when the Middle East opened its doors to foreign labor.⁴⁸

Hundreds of thousands of workers are processed and deployed by the Philippine Overseas Employment Agency (POEA) every year. Annual figures of both land-based and sea-based workers deployed over the last decade range from 350,982 in 1984, to 719,602 in 1994.⁴⁹ The Middle East employs most land-based Filipino workers.⁵⁰ In 1976, 4970 Filipino

their government banned its citizens from engaging in contract-labor in the United States. *See id.* Filipinos welcomed the overseas opportunity to work because many were recently dispossessed of their land through American colonization laws. *See id.*

⁴⁶ *See* Siddayao, *supra* note 9, at 150.

⁴⁷ *See* CHARLES W. STAHL, INTERNATIONAL LABOR MIGRATION: A STUDY OF THE ASEAN COUNTRIES, CENTER FOR MIGRATION STUDIES, OCCASIONAL PAPERS AND DOCUMENTATION 1 (1986).

⁴⁸ *See id.*

⁴⁹ *See* PHILIPPINE OVERSEAS EMPLOYMENT AGENCY, OVERSEAS EMPLOYMENT STATISTICAL COMPENDIUM, 1982-1995 3, 5. The number of Filipinos processed is at variance with the number actually deployed. *See id.* Yearly figures for processed migrants ranged from 314,284 (1982) to 760,091 (1994). *See id.* The POEA's statistics do not classify migrants by type of employment. *See* CATHOLIC INSTITUTE FOR INTERNATIONAL RELATIONS, THE LABOUR TRADE: FILIPINO MIGRANT WORKERS AROUND THE WORLD 79 (1987).

⁵⁰ *See* PHILIPPINE OVERSEAS EMPLOYMENT AGENCY, *supra* note 49, at 7. The following table illustrates the break-down of Filipino migrants by country on a yearly basis.

	Africa	Asia	Americas	Europe	Middle East	Oceania	Trust Terr.	TOTAL
1984	1,843	38,817	2,515	3,683	250,210	913	2,397	300,378
1985	1,977	52,838	3,744	4,067	253,867	953	3,048	320,494
1986	1,847	72,536	4,035	3,693	236,434	1,080	3,892	323,517
1987	1,856	90,434	5,614	5,643	272,038	1,271	5,373	382,229
1988	1,958	92,648	7,902	7,614	267,035	1,397	6,563	385,117
1989	1,741	86,196	9,962	7,830	241,081	1,247	7,289	355,346
1990	1,273	90,768	9,457	6,583	218,110	942	7,380	334,883
1991	1,964	132,592	13,373	13,156	302,825	1,374	11,409	476,693
1992	2,510	134,776	12,319	14,590	340,604	1,669	11,164	517,632
1993	2,425	168,205	12,288	13,423	302,975	1,507	8,890	509,653
1994	3,255	194,120	12,603	11,513	286,387	1,295	8,489	517,662
1995	3,615	166,774	13,469	10,279	234,310	1,398	7,039	436,884

Id. The 10 countries accepting the most Filipinos for overseas contract work between 1984 and 1995 were: (1) the Kingdom of Saudi Arabia (2,398,940); (2) Japan (434,328);

workers traveled to the Middle East for contract work, constituting twenty-six percent of all workers recruited by the government.⁵¹ In 1979, the proportion had increased to sixty-three percent, and by 1983 "more than eighty-three percent of all Filipino migrant workers were going to the Middle East."⁵² In 1990, the Philippine government processed nearly 600,000 workers for overseas employment, excluding undocumented Filipinos- About three-fourths of these workers found employment in the Middle East.⁵³

Recent estimates of Filipinos working abroad are placed at 1.35 million, although POEA officials believe the figure nears 5 million.⁵⁴ There is a dearth of reliable statistics indicating how many Filipinos are currently in the Middle East.⁵⁵ The available studies are based on outflows of migration and not actual presence in the host country.⁵⁶ Certainly

(3) UAE (265,592); (4) Hong Kong (182,091); (5) Kuwait (170,624); (6) Singapore (116,233); (7) Taiwan (109,388); (8) Qatar (85,654); (9) Bahrain (79,669); and (10) Brunei (77,376). *See id.* at 8.

⁵¹ *See* CATHOLIC INSTITUTE FOR INTERNATIONAL RELATIONS, *supra* note 49, at 79. In the first six months of 1996, the POEA deployed 119,784 land-based workers to the Middle East, 72,565 to Asia, 6412 to Europe, and 5096 to the Americas. *See* PHILIPPINE OVERSEAS EMPLOYMENT AGENCY, DEPLOYED LANDBASED CONTRACT WORKERS BY COUNTRY OF DESTINATION (1996) (on file with the *Harvard Women's Law Journal*).

⁵² *See id.*

⁵³ *See* PANG ENG FONG, REGIONALISATION AND LABOUR FLOWS IN PACIFIC ASIA 56 (1993). For pre-1987 figures, see Edita A. Tan & Dante B. Canlas, *Migrant's Saving Remittance and Labor Supply Behavior: The Philippine Case*, in *TO THE GULF AND BACK: STUDIES ON THE ECONOMIC IMPACT OF ASIAN LABOR MIGRATION* 223, 224-26 (Rashid Amjad ed., 1989). Middle Eastern employers prefer Asian workers because such employees are considered productive, cost-effective, and less likely to settle in host countries. *See* Fred Arnold & Narsa M. Shah, *Asia's Labor Pipeline: An Overview*, in *ASIAN LABOR MIGRATION: PIPELINE TO THE MIDDLE EAST* 3, 14-15 (1986). Asian workers were also considered less of a political threat and less likely to interfere with the country's internal affairs. *See id.*

⁵⁴ *See* Cecil Morella, *Pillars of Philippine Economy Get Only Contempt*, AGENCE FRANCE PRESSE, Mar. 16, 1995, available in LEXIS, World Library, ALLWLD File. The number of illegal overseas contract workers is unknown. *See* Francis M. Madigan & Imelda G. Pagtolun-an, *The Philippines*, in *HANDBOOK ON INTERNATIONAL MIGRATION* 287, 290 (William J. Serow et al. eds., 1990). Government figures are suspect because some Filipinos leave the Philippines with tourist visas and subsequently take contract jobs upon arrival in a foreign country. *See id.* at 291. In the southern part of the country where government control is almost nonexistent, Filipinos emigrate without notice or visas. *See id.* Moreover, Asian labor migration data is probably inaccurate because labor-exporting public agencies find little use in gathering data regarding a process which is temporary, spasmodic, and unpredictable. *See id.* *See also* Lionel Demery, *Asian Labor Migration: An Empirical Assessment*, in *ASIAN LABOR MIGRATION*, *supra* note 53, at 17, 18 (citing Myron Weiner, *International Migration and Development: Indians in the Persian Gulf*, 18:1 *POPULATION & DEV. REV.* 1); Benjamin V. Cariño, *Migrant Workers from the Philippines*, in *PHILIPPINE LABOR MIGRATION: IMPACT AND POLICY* 4, 5-12 (Graziano Battistella & Anthony Paganoni eds., 1992).

⁵⁵ *See* F.R. Arcinas, *The Philippines*, in *MIGRATION OF ASIAN WORKERS TO THE ARAB WORLD* 259 (Godfrey Gunatilleke ed., 1986).

⁵⁶ One shortfall in the estimates is that the formula used by these studies assumes migrants return after three or five years. *See id.* at 261.

some Filipinos have returned, died, or become permanent residents of the host countries. In contrast to the deployment figures estimating the number of OCWs leaving the Philippines, there remains an estimated 80,000 Filipinas in the UAE.⁵⁷ More generally, 1.2 million predominantly Asian women continue to work as domestic servants in the Middle East.⁵⁸

In the early 1970s, the Philippine government began promoting overseas contractual employment as part of the country's economic strategy.⁵⁹ The government focused on labor-export to the Middle East, where construction opportunities followed a sharp oil price increase in 1973.⁶⁰ Although initially designed by the government as a temporary mechanism to ease local unemployment problems, labor-export has become an indispensable part of the Philippine economy.⁶¹

A. Economic Effect of Exported Labor

The Philippine government has encouraged the export of labor. Under the Marcos regime, for example, the Secretary of Labor recognized the potential economic benefits of labor-export for the "national interest":

[T]here is a global labor market available to qualified Filipinos, especially those who are unemployed or whose employment is tantamount to unemployment because of their very low earnings. We no longer apologize for the outflow of Filipino labor abroad under such labels as the brain drain. We have decided it in such a manner that it will redound to the national interest. We are scouting aggressively for job markets for excess Filipino skills in many countries of the world.⁶²

⁵⁷ See Rashid Amjad, *Economic Impact of Migration to the Middle East on the Major Asian Labour Sending Countries—An Overview*, in *TO THE GULF AND BACK*, *supra* note 53, at 1.

⁵⁸ See *Asia-Middle East: Migrant Labor or Domestic Slaves?*, INTER PRESS SERVICE, Oct. 3, 1995, available in 1995 WL 10134683. Most of the Filipinas who go to the Gulf are between the ages of 24 and 30. See Ahmad Mardini, *Gulf-Labor: Filipinas Shy Away from the Gulf*, INTER PRESS SERVICE, Oct. 19, 1995 available in LEXIS, World Library, ALLWLD File. Approximately 5.5% of the Filipina OCWs are between 16 and 19 years old. See *id.* About 80% of Filipina OCWs are single, 18% are married, and 2% are single parents. See *id.* The source does not specify whether these categories are mutually exclusive. The major labor-exporting countries in Asia are Pakistan, India, Sri Lanka, Bangladesh, Thailand, the Philippines, Republic of Korea, and Indonesia. See Amjad, *supra* note 57, at 1.

⁵⁹ See FONG, *supra* note 53, at 57.

⁶⁰ See *id.*

⁶¹ See *id.*

⁶² Blas F. Ople, *Trends and Principles in the Labor Code*, Address Before the National Tripartite Conference on the Labor Code, Development Academy of the Philippines,

Corazon C. Aquino also pursued the labor-export program when her government replaced the Marcos regime in 1987.⁶³ The Philippine government welcomes remittances sent by the overseas workers to beneficiaries in the Philippines because they are needed to service and repay the country's \$28 billion debt and to alleviate unemployment.⁶⁴ The Friends of Filipino Migrant Workers, a nonprofit organization, predicted that the POEA would actively facilitate a labor-export program over the next ten years because Philippine unemployment and debt problems would likely persist.⁶⁵

B. General Requirements for Remittances

Remittances are mandatory under Philippine law. Under the Labor Code⁶⁶ and Executive Order No. 857,⁶⁷ every contract worker is to remit a portion of her⁶⁸ earnings to her beneficiary in the Philippines through the Philippine banking system.⁶⁹ All labor contracts must include a provision mandating workers to remit fifty to eighty percent of their earnings.⁷⁰

Tagaytay City (Oct. 23, 1975), in FRONTIERS OF LABOR AND SOCIAL POLICY: SELECTED SPEECHES 1979, at 217, 220. This search for labor markets led to the creation of the Overseas Employment Development Board and the National Seamen Board. See id.

⁶³ See Rep. Act No. 7111, An Act Establishing the Overseas Workers' Investment Fund to Provide Incentives to Overseas Workers, Reduce the Foreign Debt Burden, and For Other Purposes (1991). See also, ROBIN BROAD & JOHN CAVENAGH, *PLUNDERING PARADISE: THE STRUGGLE FOR THE ENVIRONMENT IN THE PHILIPPINES* 14-15 (1993) (citing Eric S. Caruncho, 'Katas ng Saudi' and Other Fuel, *MANILA TIMES*, Apr. 30, 1989) (noting that President Aquino praised overseas workers as the "new heroes of the Republic").

⁶⁴ See JAMES K. BOYCE, *THE PHILIPPINES: THE POLITICAL ECONOMY OF GROWTH AND IMPOVERISHMENT IN THE MARCOS ERA* 245, 259 (1993). By the end of the Marcos regime, the Philippines was the ninth most indebted country in Asia, Africa, and Latin America. See *id.* at 259. The magnitude of today's debt mandates that the present government allocate 10% of the country's gross national product (about \$3.5 billion a year) to debt repayment. See *id.* See also BROAD & CAVENAGH, *supra* note 63 at 14 (citing WORLD BANK, *THE PHILIPPINES: THE CHALLENGE OF POVERTY*, REPORT NO. 7144-PH (Oct. 17, 1988)) ("Every year more than 700,000 new job-seekers are added to a Philippine labor force that already has some 6,000,000 underemployed and unemployed workers."). For an explanation of remittances, see *infra* notes 66-82.

⁶⁵ See Ibarra C. Mateo, *Philippines Now Exports Labor to 124 Countries*, *JAPAN ECON. NEWSWIRE*, Mar. 31, 1989, available in LEXIS, World Library, ALLWLD File.

⁶⁶ THE LABOR CODE OF THE PHILIPPINES, art. XXII.

⁶⁷ Exec. Order No. 857 § 1, *Governing the Remittance to the Philippines of Foreign Exchange Earnings of Filipino Workers Abroad and For Other Purposes (1982)*, reprinted in *THE LABOR CODE OF THE PHILIPPINES AND ITS IMPLEMENTING RULES AND REGULATIONS WITH APPENDICES* 284, 406 (Vicente B. Foz ed., 1991) [hereinafter Foz].

⁶⁸ The masculine pronoun is used in all cited laws and regulations.

⁶⁹ See Exec. Order No. 857 § 1. Recruitment agencies and entities are also required to remit a portion of their workers' earnings. See *id.*

⁷⁰ Under the regulations, OCWs must remit the following percentages of their earnings:

Passports, also required, are issued to contract workers and are valid for only one year.⁷¹ Passports cannot be renewed absent proof of compliance with the remittance requirement.⁷² Likewise, the Secretary of Labor and Employment is directed not to approve the renewal of employment contracts.⁷³ A contract worker failing to comply with the requirements shall be suspended or expelled from the list of eligible workers for overseas employment.⁷⁴ In cases of subsequent violations, the worker "shall be repatriated from the job site at the expense of the employer or at his own expense, as the case may be."⁷⁵ These rules were substantially incorporated into the POEA's Rules and Regulations.⁷⁶

Official estimates of remittances are extraordinary. Records at the POEA reveal that in 1982, remittances totaled \$810.48 million.⁷⁷ This

-
- a) Seamen or mariners: 80% of basic salary;
 - b) Workers of Filipino contractors and construction companies: 70% of basic salary;
 - c) Doctors, engineers, teachers, nurses, and other professional workers whose contracts provide for free board and lodging: 70% of basic salary;
 - d) All other professional workers whose employment contracts do not provide for free board and lodging facilities: 50% basic salary;
 - e) Domestic and other service workers: 50% of basic salary;
 - f) All other workers not falling under the aforementioned categories: 50% of basic salary.

See id. at § 2.

⁷¹ *See id.* at § 3.

⁷² *See id.* at § 4.

⁷³ *See id.*

⁷⁴ *See id.* at § 9.

⁷⁵ *Id.* The regulations fail to clarify what factors will determine who exactly will pay for repatriation. It is also provided that Filipino or foreign employers and/or their representatives who fail to comply with the requirements shall be excluded from the overseas employment program. *See id.* In the case of local private employment agencies or entities, failure to comply shall be grounds for cancellation of their license or authority to recruit Filipinos for overseas employment. *See id.*

Proof of compliance may consist of the following documents (or others approved by the Central Bank of the Philippines):

- a) Bank receipt evidencing the actual conversion of their foreign exchange earnings into pesos in the Philippines;
- b) Certification from employer, duly authenticated, that remittance has been affected;
- c) Certification as to the surrender for pesos to the Philippine banking system; and
- d) Receipt of an International Postal Money Order.

See id. at § 5.

⁷⁶ *See* PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION RULES AND REGULATIONS (1985), reprinted in Foz, *supra* note 67, at 284-313. These rules provide that among the grounds for the suspension, cancellation, or revocation of license or authority to engage in overseas recruitment is the "failure to file a report on the remittance of foreign exchange earnings and such matters as may be required by the Administration." *Id.* at 292. Many of the procedural details of the remittance system were developed by an Inter-Agency Committee, presided over by the Central Bank Deputy-Governor. *See* INTER-AGENCY COMMITTEE OF THE CENTRAL BANK, MINISTRY OF LABOR AND MINISTRY OF FOREIGN AFFAIRS FOR THE IMPLEMENTATION OF E.O. 857, RESOLUTION No. 1-83 (Feb. 9, 1983). Under § 1.8 of Res. 1-83, it is provided that remittances are not deemed personal deductions for income taxation purposes. *See* Foz, *supra* note 67, at 414.

⁷⁷ *See* PHILIPPINE OVERSEAS EMPLOYMENT AGENCY, *supra* note 49, at 8. Despite the

figure, except for a sharp dip in 1983, has steadily increased over time.⁷⁸ Remittances peaked in 1994 at \$4.87 billion, reflecting a sixty-six percent growth rate from the previous year.⁷⁹ Moreover, these statistics are based on official remittances and do not include the amount unofficially channeled to the Philippines.⁸⁰ The POEA estimates that unofficial remittances range from \$2 billion to \$6 billion annually.⁸¹ Within this total of official and unofficial remittances, approximately \$10 billion, annual remittances from the Gulf alone are nearly \$4 billion.⁸²

IE. VIOLENCE AND OTHER EFFECTS OF PHILIPPINE OVERSEAS CONTRACT WORK

A. Abusive Employment Contract Practices

Although labor migration is routinely touted as mutually beneficial to the labor-exporting and labor-importing countries, little has been done to examine the conditions under which the migrants work. In the Philippines, the government's focus on remittances overlooks the realities that Filipina OCWs face. Thus, the appalling conditions such as those described in Part LA seem inevitable. A survey of conditions of domestic workers in Hong Kong revealed that they are not given a day off and are not allowed to use the telephone to seek other employment.⁸³ Some maids serve not only the employer but also the employer's siblings.⁸⁴

In the Middle East, some employers have unilaterally changed contract terms. For example, a Filipina OCW would arrive in the host

number of people deployed in the Middle East, per annum, Filipino OCWs remit more money from the United States than any other country. *See id.* at 10-11. However, total annual remittances from Filipinos in the Kingdom of Saudi Arabia and Kuwait rank second and eighth, respectively. *See id.*

⁷⁸ *See id.*

⁷⁹ *See id.*

⁸⁰ *See id.*

⁸¹ *See FONG, supra note 53, at 57.* Not all OCWs remit their earnings through the official banking system as required by law. *See Tan & Canlas, supra note 53, at 223.* Moreover, the Philippine government estimates that 41-62.1% of OCWs comply with the requirement. *See id.*

⁸² *See Asia-Middle East, supra note 58.* The exact amount of remittances to the Philippines or revenue generated therefrom is difficult to establish. *See David M. Forman, Protecting Philippine Overseas Contract Workers, 16 COMP. LAB. L.J. 26, 62 (1994) (citing Kevin Rafferty, Philippines: The Economic and Business Report, 1993/94 ASIA & PACIFIC REV. 212, 216).* Revenue from remittances is generally estimated to be over \$1 billion each year. *See id.* (estimating the figure at \$1.5 billion). *See also Edgar P. del Val, Help for Women Overseas Workers, PHIL. PANORAMA, May 2, 1993, at 9 (estimating \$1.18 billion); Dante Reyes, The Lady at the DOLE, PHIL. PANORAMA, July 26, 1992, at 30 (estimating greater than \$1 billion).*

⁸³ *See Patricia B. Licuanan, "Katas ng Saudi": A Closer Look, 9:1 PHIL. LAB. REV. 73, 76 (1985).*

⁸⁴ *See id.*

country, contract in hand, and upon arrival at her place of employment summarily be refused the contractually obligated living quarters and working conditions.⁸⁵ Filipinas have been arbitrarily reprimanded or illegally deported.⁸⁶ Others have abandoned their jobs because their employers have violated the employment contract by not paying wages.⁸⁷

B. Damage to the Philippine Economy

The Filipino government has actively promoted the export of labor because of the benefits that accrue to the Philippine economy.⁸⁸ Proponents of labor export tout it as a means of alleviating unemployment problems at home and as a method of acquiring foreign exchange and providing additional skills training for these workers.⁸⁹ Although the unemployment problems of the country are relieved by the export of labor, it has deleterious effects as well.⁹⁰

Remittances are considered the most tangible benefits of overseas employment⁹¹ because they improve the economic welfare of individuals by providing them with extra money for daily living and for investment in improved housing.⁹² However, remittances rarely promote sufficient development to make emigration unnecessary.⁹³ Predominately, remittances are spent on imported items rather than on the infrastructure necessary to create permanent jobs.⁹⁴ Therefore, the remittances fail to create self-sustaining economic activity that could serve as the infrastructure for development.⁹⁵ While some labor-exporting countries have developed schemes which channel these remittances to productive uses,⁹⁶ studies from the Philippines do not demonstrate a similar pattern.⁹⁷

⁸⁵ See CATHOLIC INSTITUTE FOR INTERNATIONAL RELATIONS, *supra* note 49, at 79.

⁸⁶ See *id.* at 82.

⁸⁷ See *id.*

⁸⁸ See *supra* notes 59–65.

⁸⁹ See *infra* notes 92 and 101.

⁹⁰ See *infra* notes 93–100 and 102–107.

⁹¹ See Siddayao, *supra* note 9, at 153.

⁹² See PHILIP L. MARTIN, LABOR MIGRATION AND ECONOMIC DEVELOPMENT, COMMISSION FOR THE STUDY OF THE INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT WORKING PAPER NO. 3 11 (Feb. 1989).

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.* But see M.G. Quibria, *Migrant Workers and Remittances: Issues for Asian Developing Countries*, 4:1 ASIAN DEV. REV. 78, 95–97 (1986) (discussing efforts in Asian countries to increase benefits to their national economies from remittances).

⁹⁶ Bangladesh has created development bonds which carry higher interest rates than bank deposits and provide preferential treatment for migrant workers in government housing when payments are made in foreign currency. See *id.* at 96. Pakistan gives similar incentives in the importation of machinery and investments in export processing zones. See *id.* at 96–97.

⁹⁷ See Arcinas, *supra* note 55, at 299. Also, although the workers earn high wages

Beyond failing to deliver the promised economic benefits, the remittance system may actually damage the economies of labor-exporting countries. Specifically, the receipt of remittances can discourage people from continuing agricultural work, pushing them out of the food production sector.⁹⁸ This rearrangement of the local labor force decreases the food supply for both domestic use and exports." Additionally, the increase in purchasing power of those receiving remittances creates excess demand and inflation.¹⁰⁰

The second benefit cited by proponents of the export of labor, that the remittance system provides an opportunity for workers to acquire new and higher skills from the host state,¹⁰¹ is similarly illusory. For while there are opportunities for the workers to develop skills in the Middle East, those opportunities are not qualitatively different from opportunities in the Philippines.¹⁰² Moreover, the overseas jobs, at least the ones in the Middle East, fail to expose Filipino workers to new technologies and modes of production that would enable the workers to fill key positions or new developmental roles upon their return home.¹⁰³

This supposed benefit is even less evident in the case of Filipina domestic helpers because their work mainly involves routine housework and menial tasks and therefore does not require that they learn many skills.¹⁰⁴ In fact, Filipina domestic helpers seldom use the skills learned

relative to wages in the Philippines, the savings and asset accumulation of these workers are not sufficient to set them up as independent entrepreneurs. See John Smart, et al., *Skills and Earnings: Issues in the Developmental Impact on the Philippines of Labor Export to the Middle East*, in *ASIAN LABOR MIGRATION*, *supra* note 53, at 101, 123.

⁹⁸ See INTERNATIONAL LABOUR ORGANISATION, *TIME FOR TRANSITION 65* (1975), cited in Quibria, *supra* note 95, at 93.

⁹⁹ See *id.*

¹⁰⁰ See *id.*

¹⁰¹ See Smart, *supra* note 97, at 105.

¹⁰² See *id.* at 111. In addition, some Filipino workers have said that it was they who had to teach skills to other migrant workers. See Arcinas, *supra* note 55, at 298-99.

¹⁰³ See *id.* at 111-12. See also Noel Vasquez, *Economic and Social Impact of Labor Migration*, in *PHILIPPINE LABOR MIGRATION*, *supra* note 54, at 41, 47-48. Because the Filipinos are hired to serve specific employment functions, employers have little incentive to provide them with opportunities for personal advancement. See *id.* at 123.

¹⁰⁴ See STAHL, *supra* note 47, at 53. It is the relatively better-educated or better-off that are in a position to take advantage of emigration opportunities. See *id.* However, the migrant's skill set may not be required by the available jobs. See *id.* In 1980, the OEDB found that 36.49% of its contract workers were college graduates, while another 13.05% had earned college units. See *id.* Nineteen percent of workers with college degrees were working in occupations requiring a level of educational attainment considerably less than that they possessed. See *id.* In one study conducted in 1983 by J. Smart and V. Teodosio, 25.4% of overseas workers reported learning new skills, but those skills could have been learned easily in the Philippines. See *id.* at 54 (summarizing the results in J. SMART & V. TEODOSIO, *SKILLS AND EARNINGS: ISSUES IN THE DEVELOPMENTAL IMPACT OF MIDDLE EAST EMPLOYMENT ON THE PHILIPPINES*, CONFERENCE ON LABOR MIGRATION TO THE MIDDLE EAST, EAST-WEST POPULATION INSTITUTE, EAST-WEST CENTER (1983)). A study in 1985 by S.P. Go showed that 34% of migrants learned new skills while overseas but did not apply those skills to their jobs in the Philippines. See *id.* (summarizing results

from the Philippines in the host country and suffer "de-skilling"¹⁰⁵ and inattention to their qualifications.¹⁰⁶ The de-skilling of these educated Filipinas occurs "because the job market abroad generally requires work that is simply an extension of women's domestic role."¹⁰⁷

C. Additional Problems Arising from the Labor-Export System

Other negative effects of overseas work include difficulties in the recruitment process, dissatisfaction with the jobs themselves, separation from family, and difficulties in re-entering the Philippines.¹⁰⁸ Dissatisfaction from the job stems in part from harsh working and living conditions caused by the heat, poor amenities, physically exhausting work, and racial discrimination and abuse by employers.¹⁰⁹ According to the Chief Information Officer of the now defunct Overseas Employment Development Board, other problems faced by overseas workers include: substitution of contract;¹¹⁰ switching the names in a contract;¹¹¹ withdrawal of provisions for free travel or adequate accommodation of work-

in S.P. GO, RETURNING FILIPINO OVERSEAS CONTRACT WORKERS: THE CASE OF BARANGAY VERGARA, METRO MANIA, POLICY WORKSHOP ON INTERNATIONAL MIGRATION IN ASIA AND THE PACIFIC, ESCAP (OCT. 1985).

¹⁰⁵ See *id.*

¹⁰⁶ See Tom Hundley, *Indentured Servitude: A Way of Life in Gulf*, SEATTLE TIMES, Oct. 22, 1992, at B4. See also Keith B. Richburg, *By its Maids: Migrant Workers are Called Heroes of National Shame*, WASH. POST, Nov. 3, 1995, at A1 (discussing the educational level of Filipina maids and economic motives behind overseas work).

¹⁰⁷ Judy Taguiwalo, *Filipino Women Demand Freedom From Debt*, 1:3 FOCUS ON GENDER: PERSPECTIVES ON WOMEN AND DEVELOPMENT 30, 32 (1993).

¹⁰⁸ See Licuanan, *supra* note 83, at 74.

¹⁰⁹ This is true in the Middle East, where workers have expressed a preference for non-Arab employers because they feel that Arabs have a low regard for Asians. See *id.* at 76. Adjusting to an uncertain employment situation upon their return to the Philippines is another problem for the overseas workers. See *id.* at 78. Upon returning, these workers spend a considerable amount of time looking for a new job in the Philippines, and when they do find one, they are not satisfied with the salaries that they receive, forcing many to re-apply for overseas jobs. See *id.* Sometimes the problem is a lack of jobs. See Ma. Cynthia Rose Banzon-Bautista, *Economic Consequences of Overseas Employment*, 5 PHIL. LAB. REV. 85, 90 (1985) (discussing case studies showing that 61% of returning migrants—both men and women—found no local jobs available, and 91% of returning migrants were actively seeking overseas employment).

¹¹⁰ Contract substitution involves alteration of wage and benefit entries in approved employment contracts or the total change of the contract itself. See Alcestis Abrera, *Illegal Recruitment: The Philippine Experience*, 4:2 PHIL. LAB. REV. 27, 40 (1979). This substitution occurs when a local representative agrees to introduce changes in the contract in order to get the Secretary of Labor's approval without securing clearance from the employer or when the employer himself violates the contract at the job site. See *id.*

¹¹¹ This practice is known as "transfer of employment or employer" and happens either when agencies freely substitute employer and sites of employment using approved/accredited principals/contracts prior to departure or when an employer freely "trades" the worker in the job market. See *id.* See also Madigan & Pagtolun-an, *supra* note 54, at

ers¹ dependents; delay or underpayment of overtime pay; changes from the provisions of the work permit about the nature of work; and levy of unnecessary fees for taxes, housing, or for the recruitment agency.¹¹²

Other aspects of life in the Gulf add to the problems faced by Filipinas. The following reports indicate that public executions are common in the Middle East. At least twelve women have been executed after Islamic trials over the past few years, most of them through public beheadings.¹¹³ The executed women were from the Philippines, Sri Lanka, Nigeria, Pakistan, and Saudi Arabia.¹¹⁴ According to a recent report made to the Philippine Senate, 150 OCWs are presently imprisoned, including 36 in Japan, 33 in Malaysia, and 27 in Saudi Arabia.¹¹⁵

Furthermore, a Presidential fact-finding mission discovered a host of other problems faced by OCWs. The mission's members found that broken homes, unwanted children, and illicit relationships with employers are experienced by these workers throughout the world.¹¹⁶ Moreover, OCWs are charged exorbitant placement and other fees by authorized recruitment agencies and their foreign counterparts.¹¹⁷ Still other fees are demanded of workers at the airports both when they leave the Philippines and when they arrive in their countries of destination.¹¹⁸ Diplomatic posts are understaffed and sorely short of operational funds to address these problems.¹¹⁹ Their requests and recommendations have

297-99 (discussing the costs and benefits of migration in terms of remittances, talent loss, family separation, and public health but ignoring violence).

¹¹² See Regina B. Dacanay, *Working Conditions of Contract Workers Abroad*, 6:2 PHIL. LAB. REV. 43, 50 (1981). More recent accounts assert that international migration is seen as threatening the fabric of Philippine society as it erodes the already fragile national identity and impairs the country's institutions and values. See Maruja M.B. Asis, *Overseas Employment and Social Transformation in Source Communities: Findings from the Philippines*, 4 ASIAN & PACIFIC MIGRATION J. 327, 328 (1995).

¹¹³ See Robert Fisk, *Arab Gulf States: Western Allies Stand Silent as Women Put to Death*, OTTAWA CITIZEN, Oct. 11, 1995, at D11. A Saudi woman was executed for allegedly running a brothel and chewing qat (a leaf from Yemen containing a mild drug). See Robert Fisk, *Women Flogged or Beheaded in Arab States; Latest Victims of Islamic Justice Often Guest Workers Along Persian Gulf*, S.F. EXAMINER, Oct. 9, 1995, at A15. In addition, Filipinas and Sri Lanka women have been lashed in Arab prisons in the Persian Gulf, usually for alleged sexual misdemeanors. See *id.*

¹¹⁴ See Fisk, *supra* note 113.

¹¹⁵ See Richburg, *supra* note 106. There have been a number of suicides among the approximately 130,000 Filipina maids in Hong Kong. See Lian Nemenzo-Hernandez, *Philippines-Labour: Maid Abuse, Made in Hong Kong*, INTER PRESS SERVICE, Aug. 12, 1994, available in LEXIS, World Library, ALLWLD file. In 1994, the Asian Migrant Center received 67 complaints from domestic helpers, more than 20% of which involved physical and sexual assaults. See *id.* The Mission for Filipino Migrant Workers received 925 complaints, an increase of 25% from the previous year. See *id.* Many incidents are not reported because the Filipinas fear humiliation, retaliation, and repatriation. See *id.*

¹¹⁶ See ASSESSMENT AND RECOMMENDATIONS OF THE PRESIDENTIAL FACT-FINDING MISSION AND POLICY ADVISORY COMMISSION ON THE PROTECTION OF OVERSEAS FILIPINOS, reprinted in part in FILIPINO WOMEN MIGRANT WORKERS, *supra* note 22, at 71-73.

¹¹⁷ See *id.*

¹¹⁸ See *id.*

¹¹⁹ See *id.*

been ignored by the government¹²⁰ The results are devastating, as exemplified by the fact that, in the Middle East, domestic helpers working up to twenty hours a day are considered nothing more than *eadama* or slaves.¹²¹

IV. CAUSES OF VIOLENCE

A. *Failure to Investigate and Address Domestic Violence Adequately*

Violence is not peculiar to overseas domestic workers but is also experienced by other immigrant women. Domestic violence has been shown to be disproportionately experienced by immigrant women in the United States, who suffer higher rates of abuse than American-born women.¹²² This statistic is correct whether the husband is himself an immigrant, or an American citizen.¹²³ Commentators have noted that domestic abuse is particularly serious in situations involving mail-order brides.¹²⁴ Filipinas in particular, who constitute the majority of mail-order brides in the United States, are advertised as meek and submissive, and conflicts arise when these brides assert themselves against their husbands.¹²⁵ The likelihood of violence is further increased because of the conditional status of the brides as immigrants. They "face the problems of a statutory framework that gives much of the control over their immigration status to their abusive spouses."¹²⁶

Similarly, some have suggested that the status of Filipina maids as migrants without rights of citizenship makes them vulnerable to abuse. They become vulnerable in the private sphere of the home, beyond the knowledge of entities that could provide assistance or protection.¹²⁷ However, the powerless and unprotected position of Filipina maids as foreigners cannot explain fully why abuse occurs. It is merely an aggravating factor.

¹²⁰ *See id.*

¹²¹ *See id.*

¹²² *See* Susan Girardo Roy, *Restoring Hope or Tolerating Abuse?: Responses to Domestic Violence Against Immigrant Women*, 9 GEO. IMMIGR. L.J. 263 (1995). One survey showed that 60% of undocumented Latina women in the Washington, D.C. area were battered by their spouses. *See id.* at 267.

¹²³ *See id.*

¹²⁴ *See* Michelle J. Anderson, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401, 1406-11 (1993).

¹²⁵ *See id.* at 1411.

¹²⁶ *Id.* In the context of domestic violence, sociologists have identified sexism as "the prime contributor to woman abuse." Terry L. Fromson, *The Case for Legal Remedies for Abused Women*, 6 N.Y.U. REV. L. & SOC. CHANGE 135, 142 (1977).

¹²⁷ *See* Liza Largoza-Maza, *The Medium Term Philippine Development Plan Toward the Year 2000: Filipino Women's Issues and Perspectives*, in *WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* 62, 64 (Julie Peters & Andrea Wolper eds., 1995).

B. Devaluation of Female Labor in the Third World

Another factor leading to the vulnerable position of Filipina maids is their inability to find well-paying jobs in the industrial and agricultural sector due to the segregation of the labor force. This segregation is augmented by industrialized nations' use of Third World countries for cheap labor, particularly in the manufacture of goods marketed in the wealthier nations.¹²⁸ These countries prefer female labor because they perceive women as more "docile and manipulable" and women "show higher levels of productivity" than their male counterparts.¹²⁹ Women are used in the international market as labor for export processing work, usually in the textiles and electronics industries.¹³⁰

In the agricultural sector, it has been argued, western models of farming and industrialization imposed upon the Third World countries continue to favor land-owning men over women as recipients of assistance.¹³¹ Women are left with few choices to eke out a living: sexual work, domestic work, informal work such as street vending or home-based piecework, and factory work.¹³² To get many of these jobs, women have migrated to urban areas¹³³ or to developed countries.¹³⁴ Opportunities for migrant women from East and Southeast Asia, particularly, have been confined to a narrow range of economic activities.¹³⁵ Many are

¹²⁸ See MARIA MIES, *PATRIARCHY AND ACCUMULATION ON A WORLD SCALE: WOMEN IN THE INTERNATIONAL DIVISION OF LABOUR* 117 (1986).

¹²⁹ *Id.*

¹³⁰ See Julia D. Fox, *Transformations in the Labor Process on a World Scale: Women in the New International Division of Labor*, in *THE LABOR PROCESS AND CONTROL OF LABOR: THE CHANGING NATURE OF WORK RELATIONS IN THE LATE TWENTIETH CENTURY* 137, 138-40 (Berch Berberoglu ed., 1993). Export processing involves shifting the labor-intensive portion of the manufacturing process to peripheral countries, while the more capital-intensive portion is completed in core countries. See *id.* The strategy is developed for "increased exploitation of labor and the maximization of profits within the framework of capitalist control of labor process on a world scale." *Id.* The rise in the number of export-processing zones ("EPZs") is phenomenal. See *id.* By 1986, some 50 countries had established EPZs in which women are disproportionately represented. See *id.* In 1993, 77% of EPZ workers in the Philippines were women receiving only 54% of the male workers wages. See *id.* at 138-39.

¹³¹ See V. SPIKE PETERSON & ANNE SISSON RUNYAN, *GLOBAL GENDER ISSUES* 94. "Western development agencies assumed that Third World countries could modernize only by following the general pattern of growth in the West . . . Thus, Western-funded development projects in the Third World focused on building large-scale industrial and urban infrastructures often at the expense of developing the agricultural sector." *Id.* at 95.

¹³² See *id.*

¹³³ See Sylvia Chant & Sarah A. Radcliffe, *Migration and Development: The Importance of Gender*, in *GENDER AND MIGRATION IN DEVELOPING COUNTRIES* 1, 3-7 (Sylvia Chant ed., 1992).

¹³⁴ See *id.*

¹³⁵ See *id.* at 8; see also CYNTHIA ENLOE, *BANANAS, BEACHES, AND BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS* 185 (1989) ("[T]he women whose home governments rely on them for remittances go abroad to work as nurses, maids, entertainers, and prostitutes.").

recruited because of racist and sexist stereotypes of women as cheap, docile, temporary, and inclined to factory work.¹³⁶ They are commodified to fit pre-existing images of what female migrants should be and what tasks they should perform.¹³⁷

C. Gender Division in the Philippines

In the Philippines, specifically, this pattern of segregation and evaluation of female labor integrated Filipino men into the modern industrialized sectors of the economy, leaving Filipinas with the most labor-intensive industrial jobs as well as agricultural, clerical, and domestic services.¹³⁸ Some women were relegated to the informal sector (subsistence commerce and domestic service), the sex trade, and overseas migration.¹³⁹

D. In Search of a Theory

Violence towards Filipinas can be explained as the aggregate effect of the sexual and international divisions of labor together with the other factors discussed above. The Filipina is subjected to abuse because she is regarded as performing nonessential tasks which do not command the same respect and remuneration as does men's work. The international division of labor ratifies her membership in a group associated with docility and submissiveness. She is exported for domestic work, furthering the sexual division of labor. She is subjected to an excessive amount of abuse not only because she is a woman, but also because she is a domestic worker, and worst of all, a migrant worker from the Philippines.

The infliction of violence is possibly the result of the construction of the "Filipina." The Filipinas' plight is a function of the nature of their status: Filipinas are imported by other countries for jobs their own citizens will not perform and for wages domestic citizens would not accept.¹⁴⁰ Because these women are dehumanized,¹⁴¹ they become seemingly legitimate targets of violence.¹⁴² The low regard for the work of

¹³⁶ See James A. Tyner, *The Social Construction of Gendered Migration from the Philippines*, 3 *ASIAN & PACIFIC MIGRATION J.* 589, 594 (1994).

¹³⁷ See *id.* at 603.

¹³⁸ See ELIZABETH UY EVIOTA, *THE POLITICAL ECONOMY OF GENDER: WOMEN AND THE SEXUAL DIVISION OF LABOUR IN THE PHILIPPINES* 61 (1992).

¹³⁹ See *id.* at 98.

¹⁴⁰ See Arnel F. de Guzman, *Protection of the Rights of Migrant Workers in the Philippines*, in *HUMAN RIGHTS OF MIGRANT WORKERS: AGENDA FOR NGOs* 103, 107 (Graziano Battistella ed., 1993) [hereinafter *HUMAN RIGHTS*].

¹⁴¹ See *supra* notes 122-145.

¹⁴² See Tyner, *supra* note 136, at 606 ("The commodification of women migrant

women, the isolation of the domestic helpers from the public, and sexism, both in the labor-importing and labor-exporting countries, produce an image without dignity and one which cannot command respect from employers.

Unfortunately, the role of capitalism does not absolve the Philippine government of accountability because it was a spirited participant in the international division of labor. The government established export processing zones so that Filipinas could be used as cheap labor by companies from industrialized countries.¹⁴³ It also pushed Filipinas into prostitution,¹⁴⁴ and until recently, the government acquiesced to the practice of mail-order marriages.¹⁴⁵ When Filipinas become the victims of violence, the Philippine government is confronted with a problem partly of its own creation. Because of its participation in the creation of the Filipina's image, the Philippine government's plea for the humane treatment of its women becomes an unconvincing, ridiculous message: "Please do not maltreat our chattel."

It has also been suggested that because the Philippine economy is in such disarray, the government is prevented from actively enforcing the laws that have been designed to protect OCWs. After the Sarah Balabagan case, calls to restrict the export of OCWs were criticized because they would "turn one person's misfortune into the misery of many, denying them a livelihood."¹⁴⁶ Government officials have occasionally referred to a balancing of interests between those of its workers on the one hand and those of the state on the other.¹⁴⁷ Without repudiating the role of economic constraints in the Philippine government's inability to address the plight of its workers, one must conclude that this is an insensitive excuse for the crisis. It allows the government to say that until opportunities in the Philippines improve, Filipinas must suffer violence at the hands of their employers. Moreover, the government's failure to address the problem might be deliberate. Given its interest in receiving remittances and the availability of other compliant peoples to fill the employment vacuum in labor-importing countries,¹⁴⁸ it is not hard

workers has, in part, contributed to the widespread exploitation of overseas workers across cultures . . . [W]hen migrants are not viewed as individuals, but by the functions they perform, they become nonentities: products.").

¹⁴³ See MIES, *supra* note 128, at 137-42.

¹⁴⁴ For a discussion of the role of the Philippine government in the propagation of sexual labor, see *id.*; EVIOTA, *supra* note 138, at 133-40.

¹⁴⁵ This practice was banned in the Philippines recently. See Rep. Act. No. 6955, An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail-Order Basis and Other Similar Practices, Including the Advertisement, Publication, Printing or Distribution of Brochures, Fliers, and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefore (1990).

¹⁴⁶ *Rough Justice; Overseas Workers Need to Be Better Protected*, ASIaweek, Oct. 13, 1995, at 26.

¹⁴⁷ See Dacanay, *supra* note 112, at 52 (referring to a paper prepared by the OEED Deputy Director at the time, Alcestis Abrera).

¹⁴⁸ When the Philippine government backed its citizens' demands for higher wages in

to see why the Philippine government does not put a high priority on advocating for OCWs. The economic excuse avoids key issues and commits women overseas workers to continuing oppression. It also suggests that the Philippine Constitution and its laws are not mandates but merely guidelines that can be tempered by economic exigencies.

V. LEGAL ANALYSIS

A. Statutory and Demonstrative Framework

The Philippines has a plethora of laws, policies, and agencies that address the working conditions of overseas workers. The Philippine Constitution recognizes the "role of women in nation-building" and provides that the State "shall ensure the fundamental equality before the law of women and men"¹⁴⁹ The Constitution also provides that,

The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.¹⁵⁰

Equally prominent in the Constitution is the role of labor, as illustrated by the following provisions:

The State shall promote a just and dynamic order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social service, promote full employment, a rising standard of living and an improved quality of life for all.¹⁵¹

The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.¹⁵²

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.¹⁵³

Singapore, for example, the Singapore government turned to Sri Lanka and Indonesia as sources of labor. See Forman, *supra* note 82, at 46-47.

¹⁴⁹ PHIL. CONST. (1987) art. II, § 14.

¹⁵⁰ PHIL. CONST. (1987) art. XIII, § 14.

¹⁵¹ PHIL. CONST. (1987) art. II, § 9.

¹⁵² PHIL. CONST. (1987) art. II, § 18.

¹⁵³ PHIL. CONST. (1987) art. XIII, § 3. It goes on to state that:

It shall organize the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right

. . . They (workers) shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.¹⁵⁴

The Labor Code of the Philippines contains similar tenets,¹⁵⁵ including several provisions designed to protect OCWs. For example, the Code initially created three different agencies to address overseas work: the Bureau of Employment Services (BES) to regulate the private sector's role in recruitment;¹⁵⁶ the Overseas Employment Development Board (OEDB) to act as the government recruitment agency;¹⁵⁷ and the National Seamen Board (NSB) to address seafarers' employment.¹⁵⁸

The BES was responsible for developing and monitoring a comprehensive employment program. It was mandated to a) maintain a registration and/or licensing system, b) to regulate private sector participation in the recruitment and placement of workers, locally and overseas, and c) to secure the best possible terms and conditions of employment for Filipino contract workers.¹⁵⁹

Created to undertake a systematic program for overseas employment of Filipino workers beyond domestic needs, the OEDB was also in-

to strike in accordance with law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprise to reasonable returns on investments, and to expansion and growth.

Id.

¹⁵⁴*Id.*

¹⁵⁵The Code provides that:

The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

LABOR CODE OF THE PHILIPPINES, art. III.

¹⁵⁶*See id.* at art. XV.

¹⁵⁷*See id.* at art. XVII. An Office of Emigrant Affairs was also established (art. XXIV of the Labor Code), and was later replaced with the Commission on Filipinos Overseas, which was tasked with the formulation of "an integrated program for the promotion of the welfare of Filipinos overseas by suitable existing agencies." *See* Batas Pambansa Blg. 79, An Act Creating the Commission on Filipinos Overseas and for Other Purposes (1980), § 3(b).

¹⁵⁸*See* Siddayao, *supra* note 9, at 150-51.

¹⁵⁹*See* Exec. Order No. 797 (1982).

tended to protect workers' rights to fair and equitable employment practices.¹⁶⁰ It had*the power and duty:

1. To promote the overseas employment of Filipino workers through a comprehensive market promotion and development program;
2. To secure the best possible terms and conditions of employment of contract workers on a government to government basis and to ensure compliance therewith;
3. To recruit and place workers for overseas employment on a government-to-government arrangement and in such other sectors as policy may dictate; and
4. To act as secretariat for the Board of Trustees of the Welfare and Training Fund for Overseas Workers.¹⁶¹

In 1982, the BES, OEDB, and NSB merged into the POEA.¹⁶² The new agency was intended to oversee the implementation of all rules and regulations, market development efforts, and welfare programs pertaining to overseas employment.¹⁶³ Creators hoped that the merger of the efforts of the OEDB and the BES (the NSB was abolished) would resolve the conflict between the highly regulated private sector and the unregulated OEDB, the latter being viewed as a source of competition by the former.¹⁶⁴ The merger also targeted the lack of coordination between these two bodies.¹⁶⁵

When President Aquino assumed power, she reorganized the Ministry of Labor and gave it responsibility for "the advancement of worker's welfare by providing for just and humane working conditions and terms of employment."¹⁶⁶ It was mandated to "protect and promote the interests of every citizen desiring to work locally or overseas by securing for him the most equitable terms and conditions of employment, by providing social and welfare services," and by providing "for safe, decent, humane,

¹⁶⁰ *See id.*

¹⁶¹ *Id.*

¹⁶² *See id.*

¹⁶³ *See id.*

¹⁶⁴ *See* STAHL, *supra* note 47, at 5.

¹⁶⁵ *See id.* The POEA is composed of three offices. Siddayao, *supra* note 9, at 151. The Market Development and Placement Office takes care of operations aimed at generating more job opportunities and facilitating placement services. *See id.* The Licensing and Regulation Office sets employment standards and regulates the operation of private employment agencies, contracting entities, and manning services. *See id.* The Worker's Assistance and Adjudication Office maintains a manpower registry and provides legal and welfare services to the Filipino workers communities and their families. *See id.*

¹⁶⁶ Exec. Order No. 126, Reorganizing the Ministry of Labor and Employment and For Other Purposes (Jan. 30, 1987), § 4(b), reprinted in FOZ, *supra* note 67, at 334-42.

and improved working conditions and environment for all workers, particularly women and young workers."¹⁶⁷ Aquino reorganized the POEA and summoned it to protect the rights of Filipino overseas workers "to fair and equitable recruitment and employment practices and ensure their welfare" and to "secure the best terms and conditions of employment."¹⁶³ The POEA also has a Regional Labor Center for the Middle East and Africa, including locations in Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, United Arab Emirates, Iraq, Jordan, Lebanon, Iran, North and South Yemen, Nigeria, Malta, and Cyprus.¹⁶⁹ Regional offices search for employment and contracting opportunities and coordinate labor attaché activities on employment and workers* protection for the Department of Foreign Affairs.¹⁷⁰ The Overseas Workers' Welfare Administration (OWWA), which develops and manages an overseas workers' fund, bilateral agreements between the Philippines and labor-importing countries, and labor attaches in the Philippine Consulates, also protects workers.¹⁷¹ The Philippine government has even promulgated separate regulations for overseas employment in households.¹⁷²

¹⁶⁷ *Id.* at § 5.

¹⁶⁸ Exec. Order No. 247, Reorganizing the Philippine Overseas Employment Administration and For Other Purposes (July 24, 1987), § 3(c) and (i), *reprinted in* Foz, *supra* note 67 at 405-07. *See also* Philippine Overseas Employment Administration, Rules and Regulations Governing Overseas Employment (amended 1991), *reprinted in* C.A. AZUCENA, LABOR LAW HANDBOOK: THE LABOR CODE WITH ESSENTIAL NOTES AND RELATED LAWS 137-83 (1996).

¹⁶⁹ *See* Forman, *supra* note 82, at 41.

¹⁷⁰ *See id.* Article XXI. of the Labor Code provides:

Foreign service role and participation. To provide ample protection to Filipino workers abroad, the labor attachés, the labor reporting officers duly designated by the Secretary of Labor and the Philippine diplomatic or consular officials concerned shall, even without prior instructions or advice from the home office, exercise the power and duty:

(a) To provide all Filipino workers within their jurisdiction assistance on all matters arising out of employment;

(b) To ensure that Filipino workers are not exploited or discriminated against;

(c) To verify and certify as requisite to authentication that the terms and conditions of employment in contracts involving Filipino workers are in accordance with the Labor Code and rules and regulations of the Overseas Employment Development Board and National Seamen Board;

(d) To make continuing studies or researches and recommendations on the various aspects of the employment market within their jurisdiction;

(e) To gather and analyze information on the employment situation and its probable trends, and to make such information available; and

(f) To perform such other duties as may be required of them from time to time.

LABOR CODE OF THE PHILIPPINES, art. XXI.

¹⁷¹ *See* Presidential Decree No. 1694, Organization and Administration of the Welfare Fund for Overseas Workers (1980), which created a fund to be used to provide "social and welfare services to Filipino overseas workers, including insurance coverage, legal assistance, placement assistance, and remittance services."

¹⁷² In order to hire a Filipino worker as a household employee, the prospective

B. *The Response of the Philippine Government*

Despite their expansiveness, the elaborate set of rules fails to protect overseas migrant workers adequately. In the face of increasing reports of violence, the Philippine government continues to enact such measures, ostensibly to respond to the persistence of violence against Filipina domestic workers but has not put any real enforcement effort behind them.

1. Executive Branch

The executive branch of the Philippine government has not addressed directly the issue of violence against Filipina OCWs. For example, the Aquino Administration drafted the Philippine Development Plan for "Women, which noted the socio-psychological problems associated with the exportation of labor.¹⁷³ However, the Plan did not address the issue of violence.¹⁷⁴ When President Ramos* Foreign Affairs Secretary, Roberto Romulo, outlined the government's foreign affairs* priorities, he did not mention the plight of domestic helpers.¹⁷⁵ Of the six strategic concerns of the Ramos Administration, one is over Filipino workers currently employed in the Middle East "in view of the security and economic situation in that region"¹⁷⁶ Romulo's concern focuses on the exposure

employer must: (a) be financially capable and of known good moral standing in his community and must obtain a certification to this effect from a reputable employers' organization such as a Chamber of Commerce or Industry or an Employers Association, (b) provide an authenticated authority/permit to hire from his government's Ministry of Labor and/or visa assurance from his government's Ministry of Foreign Affairs, and (c) provide appropriate guarantees of compliance with the terms and conditions established by the OEDB. *See* Policy Instruction No. 45, § 1981, Directing the OEDB to Monitor, Develop and Administer the Hiring and Employment of Filipinos in Foreign Households, *reprinted in* FOZ, *supra* note 67, at 390-91.

¹⁷³ *See* Forman, *supra* note 82, at 36.

¹⁷⁴ The Plan lists the following problems: (a) a disorientation of values resulting from the sudden increase in income from overseas work; (b) solo parenting and its attendant problems; (c) emotional pressure, loneliness, and anxiety caused by temporary separation from loved ones; (d) marital strain and dissolution; (e) neglect of children; (f) negative economic dislocation effects on the family; and (g) inadequate programs for the reintegration of returning workers. *See id.* The Plan also states that the labor migration program may be leading to the deterioration of the quality of human resources available for domestic needs of the country and that it may be "creaming off" the best workers of the domestic labor force. *See id.*

¹⁷⁵ *See* Roberto R. Romulo, *Philippine Foreign Policy: New Policy in a Changing World*, 17:2 SMU FLETCHER F. WORLD AFF. 131, 132 (1993).

¹⁷⁶ *Id.* Romulo's comments are worth quoting in their entirety:

No region in the world has grown in importance for the Philippines as the Middle East has over the past decade. High oil dependency in the early 1980s up through the present has spawned a large trade deficit. Petroleum imports of 120 million barrels in support of the country's energy infrastructure program will

of OCWs to war and ignores the dangers the workers face in the hands of their employers.

In response to the increasing reports of abuse against OCWs, the Ramos administration is now scrambling to address the dangers they face. The Philippines has already banned Filipinos from working in Kuwait.¹⁷⁷ After the hanging of Flor Contemplacion, President Ramos stated that his administration would continue in its efforts to protect Filipino OCWs.¹⁷⁸ On March 20, 1995, Ramos created a fact-finding body to examine the policies and actions of the Philippine Government to protect overseas Filipinos.¹⁷⁹ The Commission recommended:

1. the immediate phase-out of all women domestic helpers in the Middle East, as well as women entertainers for Japan, Greece and Cyprus;¹⁸⁰
2. elaborate deployment and departure procedures for OCWs and stricter supervision of airport personnel;¹⁸¹
3. an increase in diplomatic funds and personnel;¹⁸²
4. the documentation of undocumented Filipino workers who are already overseas;¹⁸³
5. the restructuring of the OWWA as "an independent corporation like the Social Security System";¹⁸⁴

cause the deficit to swell further.

Additionally, nearly one million Filipino overseas contract workers (OCWs) remitted close to two billion dollars in foreign exchange earnings which were critical to the Philippines in this period of low growth. The Gulf War of 1991 was especially critical for countries which export labor to the Middle East as the threat and then actuality of war forced the evacuation of thousands of workers from areas of battle. For the Philippines, over 30,000 OCWs were evacuated from the danger zones of Kuwait, Iraq, and northern portions of the Kingdom of Saudi Arabia. While the prospect for a full-scale war in the Middle East is remote, ensuring the protection of overseas workers in the area is a paramount foreign policy concern.

Id. at 140-41.

¹⁷⁷ See *Asian Maids*, *supra* note 39. Illegal recruiters in Manila nonetheless find ways to satisfy the demand for domestic helpers in that country. See *id.*

¹⁷⁸ See Rosario Liquicia, *Ramos Moves to Defuse Anger Over Singapore Hanging*, REUTERS, Apr. 10, 1995, available in LEXIS, World Library, ALLWLD File. Ramos suspended nine diplomats and labor officials after the "inquiry found them to have been remiss in their duties in connection with the execution . . ." *Id.* He also directed the Government Ombudsman to examine the possibility of filing criminal charges against the diplomats and labor officials who were in Singapore between 1991 and 1995. See *id.* The Secretaries of Labor and Foreign Affairs were forced to resign, and the Philippine Ambassador to Singapore was recalled. See Torrevillas, *supra* note 22, at 47.

¹⁷⁹ See Exec. Order No. 231, Creating the Presidential Fact-Finding and Policy Advisory Commission on the Protection of Overseas Filipinos (1995).

¹⁸⁰ See ASSESSMENT, *supra* note 116, at 74.

¹⁸¹ See *id.* at 76.

¹⁸² See *id.* at 77.

¹⁸³ See *id.*

¹⁸⁴ See *id.*

6. the institution of a permanent ban on all recruitment agencies previously banned, as well as agencies that have been cancelled, delisted, or inactive;¹⁸⁵

7. the creation of a bank and hospital for OCWs in each exporting country;¹⁸⁶ and

8. a tax on private employment agencies to generate revenue for job promotion and skills training.¹⁸⁷

The Ramos government approved yet another law to strengthen assistance to Filipino workers by Philippine diplomats.¹⁸⁸ Under this law, adopted in 1995, labor officials will assist workers with work-related problems such as non-payment of salaries, and consulates will address police matters such as arrests and detentions.¹⁸⁹ The law also provides for a \$7.69 million fund to be used for repatriation of OCWs in times of crises and for legal expenses.¹⁹⁰

2. Legislative Branch

During the Aquino administration, the Philippine Senate considered twenty-three bills and forty-one resolutions related to overseas employment.¹⁹¹ The House of Representatives debated thirty-two bills and forty-six resolutions.¹⁹² Of these, only one bill became law.¹⁹³ This new law¹⁹⁴ created the Overseas Workers' Investment Fund Board and gave the Board the power to encourage greater participation of Filipino OCWs in official remittance schemes.¹⁹⁵ Additionally, the law charged the Board with, *inter alia*, measuring the impact of remittances on the national debt.¹⁹⁶

¹⁸⁵ See *id.* at 78.

¹⁸⁶ See *id.* at 79.

¹⁸⁷ See *id.*

¹⁸⁸ See Ramos Approves Code to Help Filipino Migrant Workers, AGENCE FRANCE PRESSE, Nov. 29, 1995, available in 1995 WL 11477832.

¹⁸⁹ See *id.* The provision approved by Ramos was drawn up by a special committee from the Departments of Labor and Foreign Affairs. See *id.*

¹⁹⁰ See *id.*

¹⁹¹ See Maruja M.B. Asis, *The Overseas Employment Program Policy* in PHILIPPINE LABOR MIGRATION, *supra* note 54, at 68, 74-77.

¹⁹² See *id.*

¹⁹³ See *id.*

¹⁹⁴ See Rep. Act No. 7111, An Act Establishing the Overseas Workers' Investment Fund to Provide Incentives to Overseas Workers, Reduce the Foreign Debt Burden, and For Other Purposes (1991).

¹⁹⁵ See *id.*

¹⁹⁶ See *id.* The law also provides that it is the policy of the state not only to protect and promote the welfare of Filipino overseas workers, but also "to reduce the foreign debt burden in order to better achieve sustained economic growth by way of tapping the unofficial and informal remittances of said workers." *Id.*

In 1995, the legislature passed the Migrant Workers and Overseas Filipinos Act.¹⁹⁷ The statute's basic provisions delineate stricter standards against illegal recruitment and limit the deployment of Filipinos to countries where the rights of migrant workers are protected.¹⁹⁸ Furthermore, the Act provides for the mandatory repatriation of underage migrant workers¹⁹⁹ and the establishment of a legal assistance fund for migrant workers,²⁰⁰ complete with the position of Legal Assistant for Migrant Workers to provide and coordinate all legal assistance services to Filipino migrant workers.²⁰¹ The Act recognizes "the contribution of overseas migrant women workers and their particular vulnerabilities" and provides that "the State shall apply gender-sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers."²⁰² But apart from mandating representation by women on the boards of the POEA and the OWWA,²⁰³ the Act has no specific provisions for the protection of women. Licensed overseas recruitment agencies have also criticized the law as another set of restrictions on legitimate placement agencies which does nothing to curb illegal recruitment.²⁰⁴

In addition to the passage of the Migrant Workers and Overseas Filipinos Act, members of Congress, such as Senator Bias Ople, who promoted the export of labor during the Marcos regime, have called for an

¹⁹⁷ See Rep. Act No. 8042, An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress and For Other Purposes (1995). The new Act expressly provides that "the State does not promote overseas employment as a means to sustain economic growth and achieve national development" and that the State "shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development." *Id.* at § 2(c).

¹⁹⁸ See *id.* at § 4. Under the Act, the Philippine government will assume the labor-importing country guarantees the protection of the rights of overseas Filipino workers if any one of the conditions below are satisfied by such other country:

(a) It has existing labor and social laws protecting the rights of migrant workers;

(b) It is a signatory to multilateral conventions, declarations, or resolutions relating to the protection of migrant workers;

(c) It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and

(d) It is taking positive, concrete measures to protect the rights of migrant workers.

See *id.*

¹⁹⁹ See *id.* at § 16.

²⁰⁰ See *id.* at § 25.

²⁰¹ See *id.* at § 24.

²⁰² *Id.* at § 2(d). "Gender sensitivity" is defined in the Act as the "cognizance of the inequalities and inequalities [sic] prevalent in society between women and men and a commitment to address issues with concern for the respective interests of the sexes." *Id.* at § 3(b).

²⁰³ See *id.* at § 32.

²⁰⁴ See *Philippine Employment Agencies Protest New Laws on Overseas Workers*, DEUTSCHE PRESSE-AGENTUR, July 7, 1995, available in LEXIS, World Library, ALLWLD File.

end to the government's export of domestic helpers within the next two to three years.²⁰⁵ There have been calls for the President to convene a joint committee of the Department of Labor and the Department of Foreign Affairs for the purpose of initiating bilateral agreements between the Philippines and host countries to protect exported workers.²⁰⁶

On several occasions, the Philippine government offered to host a global conference on international migration, but each time the proposal failed to garner sufficient support from other countries to proceed.²⁰⁷ Labor-importing countries such as Saudi Arabia, Kuwait, and the UAE have expressed little interest in the invitation.²⁰⁸ Several countries oppose the holding of a migration conference due to "summit fatigue" from the large number of world conferences on various issues that have been held over the past few years and claim that the migration issue can be discussed with lower-level representatives.²⁰⁹

The voluminous collection of laws, policies, codes, and legislative orders have been unable to stem the tide of violence against Filipina overseas domestic helpers. Although impressive in appearance, the legislative structure does not focus on the causes of violence. In the 1970s, when the labor-export program began, the body of laws that developed focused solely on promoting overseas programs as a means of resolving the country's unemployment problem and on securing remittances from these workers.²¹⁰ Moreover, despite the filtering back of stories of violence against Filipina maids, the Philippine government has been reluctant to dispose of the program altogether.²¹¹

²⁰⁵ See Michael Bociurkiw & Jessica Carter, *End Amah Exports, Says Senator*, SOUTH CHINA MORNING POST, Apr. 4, 1993, available in LEXIS, World Library, ALLWLD File. Nongovernmental organizations ("NGOs") have also called for an end to the labor-export program, criticizing the "equation of manpower and foreign exchange generated from traditional exports . . . as commodification of human labor." Mateo, *supra* note 65. MIGRANTE, an umbrella group of 31 support organizations, criticized the government for its failure to provide employment in the Philippines. See Parpan, *supra* note 23. KAIBIGAN, another NGO, has suggested a phase-out of the industry. See *id.* See also Forman, *supra* note 82, at 62-63. Ramos' Labor Secretary refused to ban labor export, deeming a ban unfeasible because immigration cannot be stopped. See Johanna Son, *Seeking a Stop to Abuse of Overseas Workers*, INTER PRESS SERVICE, Jan. 16, 1995, available in 1995 WL 2259428. According to the Secretary, a ban on the export of labor would only encourage "smuggling" of these workers out of the country. See *id.*

²⁰⁶ The Philippine Senate has also filed a resolution directing the appropriate Senate committees to conduct studies on how the government can provide legal assistance to OCWs. See de Guzman, *supra* note 140, at 108.

²⁰⁷ See Jaya Dayal, *Migration: Philippine Bid for Meeting Falls on Deaf Ears*, INTER PRESS SERVICE, Oct. 3, 1995, available in 1995 WL 10134688.

²⁰⁸ See *id.*

²⁰⁹ See Johanna Son, *Migrants Everywhere, But Hardly in Beijing Document*, INTER PRESS SERVICE, Sept. 14, 1995, available in 1995 WL 10134288.

²¹⁰ See *supra* notes 62-65.

²¹¹ See *supra* notes 62-65.

Even when stories of the death of these workers had become commonplace in the news, the Philippine government's response remained ineffective. The Migrant Workers and Overseas Filipinos Act is reactive, and at best can mitigate only nominally the violence against women. Strictures on the recruitment process are meaningless when the source of the problem is *illegal* recruitment, something which the government has hardly addressed.

C. International Law Initiatives

International law has responded to many of the concerns of migrant workers. The International Labor Organization has been actively pursuing the protection of these workers ever since its creation in 1919 and has adopted numerous Conventions and Resolutions to curb abuses.²¹² Of the instruments now in existence, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families²¹³ is the most comprehensive international instrument covering the rights of migrants. The Convention addresses some of the common problems experienced by migrant workers.²¹⁴ Its "ingenuity" is in the establishment of such rights as the right to recourse to consular or

²¹²For a discussion of the evolution of international law on the protection of migrants, see Ved P. Nanda, *The Protection of the Rights of Migrant Workers: Unfinished Business*, in HUMAN RIGHTS, *supra* note 140, at 253, 254-56. The international community has also made several attempts to protect women generally. See Rebecca J. Cook, *Women's International Human Rights: A Bibliography*, 24 N.Y.U. J. INT'L L. & POL. 857 (1992); Rebecca J. Cook & Valerie L. Oosterveld, *A Select Bibliography of Women's Human Rights*, 44 AM. U. L. REV. 1429 (1995); Lauren Gilbert, *Rights, Refugee Women and Reproductive Health*, 44 AM. U. L. REV. 1213 (1995). See also Lance Compa, *International Labor Standards and Instruments of Recourse for Working Women*, 17 YALE J. INT'L L. 151 (1992).

²¹³GA Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, reprinted in 30 INT'L LEGAL MATERIALS 1519-53 (1991). The Convention was adopted unanimously on December 18, 1990 and opened for signature on May 2, 1991. See Gustavo Capdevila, *Population: Hostility and Danger Faced by Migrants Worldwide*, INTER PRESS SERVICE, Feb. 13, 1996, available in 1996 WL 7881556. Egypt, Morocco, the Philippines, and the Seychelles ratified this Convention. See *id.*

²¹⁴Part III of the Convention enumerates several rights of migrants and their families. See GA Res. 45/158, *supra* note 213, arts. 8-40. Migrants and their families have the following rights: to leave any State, including their State of origin, and to enter and remain in their State of origin (art. 8); to life (art. 9); not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (art. 10); not to be held in slavery or servitude (art. 11); to exercise freedom of thought, conscience, and religion (art. 12); to hold opinions (art. 13); to privacy (art. 14); not to be arbitrarily deprived of property (art. 15); to liberty and security of person (art. 16); to humane treatment (art. 17); to equality with nationals of the State (art. 18) not to be held guilty of any criminal offense on account of any act or omission that did not constitute a criminal offense at the time the offense was committed (art. 19); and not to be imprisoned for failure to fulfill a contractual obligation (art. 20).

diplomatic protection, the right to transfer funds, and the right to be informed of all conditions applicable to their admission into the country and employment²¹⁵ It has been called a "landmark" because it provides protection, for the first time, to "project-tied," "self-employed" and "special employment" workers.²¹⁶ But while the rights recognized by the Convention resemble a bill of rights for migrant workers, the Convention does not address the specific situation of migrant women.²¹⁷ Commentators have criticized the convention for failing to address the child-bearing function of women but have ignored the issue of their vulnerability to violence.²¹⁸

The Philippine government's participation in the international community with regard to the protection of overseas workers is disappointing. Despite the array of legislation and regulations enacted domestically for the protection of OCWs, the Philippine government has not ratified International Labor Organization conventions and recommendations. These would raise the standards for the promotion and protection of the rights and welfare of migrant workers through providing humane conditions of work.²¹⁹

Because of the lack of legal support from both the Philippines and the international arena, thousands of women working in the Gulf have sought repatriation by the Philippine government.²²⁰ In 1994, more than 4000

The Convention also provides that it shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy, or attempt to destroy identity documents of migrants (art. 21). Migrants and their families shall not be subjected to collective expulsion (art. 22) and shall have the right to the protection and assistance of the consular and diplomatic authorities of their State of origin (art. 23). Other rights include the right to be recognized as a person (art. 24); to equal treatment with nationals with respect to remuneration (art. 25); to take part in meetings and activities of trade unions (art. 26); to receive social security (art. 27); to receive medical care (art. 28); and to access to education (art. 31). Signatory states shall also respect the migrants' cultural identity (art. 36) and shall inform them of all conditions applicable to their admission and employment (art. 37). Migrants shall have the right to liberty of movement (art. 39), to form associations and trade unions (art. 40), to participate in the public affairs of the State (art. 41), and to transfer their earnings, savings and personal belongings (art. 32). *See id.*

²¹⁵ *See id.*, arts. 57–71. *See* L. Rao Penna, *Some Salient Human Rights in the UN Convention on Migrant Workers*, in HUMAN RIGHTS, *supra* note 140, at 236–37.

²¹⁶ *See* Nanda, *supra* note 212, at 261.

²¹⁷ *Id.* at 261–64. For a discussion of the provisions of the Convention, *see* Penna, *supra* note 215, at 235–52.

²¹⁸ *See* Shirley Hune, *Migrant Women in the Context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 25 INT'L MIGRATION REV. 800 (1991).

²¹⁹ *See* HUMAN RIGHTS, *supra* note 140, at 105. As of 1991 the Philippine Government had ratified 22 International Labor Organization Conventions. For a list of these conventions, *see* AMNESTY INTERNATIONAL, PHILIPPINES: HUMAN RIGHTS VIOLATIONS AND THE LABOUR MOVEMENT 50, app. II (June 1991).

²²⁰ *See* *Thousands of Filipina Maids Evacuated*, APS DIPLOMAT RECORDER, Apr. 27, 1995, available in 1995 WL 8162771.

women were repatriated from Saudi Arabia, and another 1000 from Kuwait.²²¹ Over 1000 women have returned from the UAE in the last two years.²²² These women complained of maltreatment by their employers including low or withheld wages, unlawful confinement, verbal abuse, assault, and rape.²²³

More problems face these women when they seek refuge in the Philippine embassies. In 1993, a Kuwaiti-funded program paid for the repatriation of at least 416 women.²²⁴ Upon their return to the Philippines, the women reported that they were mistreated by both their employers and the Filipino embassy staff stationed in Kuwait.²²⁵ The repatriated Filipinas described

"squatting" in the Philippine Embassy for days after "running away" from employers who beat, raped, tortured or cheated them; of alleged collusion between employees and "volunteers" working for the embassy, and Kuwaiti guards who continued abusing women at the embassy; and of the callousness of embassy staff and the indifference of the Philippine government to their plight.²²⁶

Ramos* fact-finding mission noted a "continuing stream" of Filipinas that flee their employers and huddle in embassies and OWWA offices.²²⁷

VI. CONCLUSION

An image is a sight which has been recreated or reproduced. It is an appearance . . . which has been detached from the place and time in which it first made its appearance and preserved—for a few moments or a few centuries.²²⁸

The use of women for the benefit of international trade has fostered violence against Filipina OCWs. Unfortunately, violence and suffering on the part of the OCWs cannot be legislated out of existence. Once glorifying labor export for the amount of money that it brought home,

²²¹ *See id.*

²²² *See id.*

²²³ *See id.*

²²⁴ *See* Teresa Albor, *Beaten and Exploited—Why 400 Filipinas Fled Kuwait*, SOUTH CHINA MORNING POST, July 18, 1993, available in LEXIS, World Library, ALLWLD File. Some Filipinas alleged that their employers' children would participate in beatings. *See id.*

²²⁵ *See id.*

²²⁶ *See id.*

²²⁷ *See* Exec. Order No. 231.

²²⁸ JOHN BERGER, *WAYS OF SEEING* 9-10 (1981).

Philippine policymakers can no longer ignore the serious social consequences it has. Despite the continuous flow of stories of violence, the Philippines has displayed reluctance to reduce the number of its OCWs or protect them adequately. Its own statistics show that the numbers of workers who are deployed have steadily increased.²²⁹ Rather than approaching the matter from a systemic vantage point, it has opted instead to further regulate recruitment and beg for the life of its workers on a case-by-case basis as it did for Sarah Balabagan.

Demands to halt the export of labor will grow more pronounced because it is increasingly evident that elimination of labor export is the only way out of this crisis. The country will doubtless suffer economic setbacks, but the dignity and life of suffering Filipinas is more valuable than the economic benefits of remittances for labor export. This is not to say that all the efforts of the Philippine government and the international community are useless, but a variety of changes need implementation to improve the Filipina's status.

The government should continue to work on improving the local economy, generating more opportunities for employment, and affording more protection for its overseas workers. But even that is not enough. The conditions described in this Article reflect the world-wide degraded status of women under capitalism and will change only with the transformation of these structures. An important step in improving the status of the Filipina is to recognize that "there are no value-free or power-free frameworks."²³⁰ Traditional theories promoting allegedly gender-neutral international relations must be replaced with theories that reorganize the historical violence against women. Understanding the situation of Filipina domestic helpers is a crucial first step in reconstructing her image and in deterring the violence against her.

²²⁹ See *supra* note 50 and surrounding text.

²³⁰ BERGER, *supra* note 228, at 12.